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3 STATE OF CALIFORNIA
4 ENVIRONMENTAL PROTECTION AGENCY
5 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
6

7 In the Matter of:

Docket HWCA 2006-1227

8 ROMIC ENVIRONMENTAL
9 TECHNOLOGIES CORPORATION
10 2081 Bay Road
East Palo Alto, California
94303-1316

NOTICE OF DEFENSE

Health and Safety Code Section 25187(d)

11 ID No. CAD 009 452 657

12 Respondent.
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14 Respondent Romic Environmental Technologies Corporation is in receipt of the
15 Enforcement Order issued by the Department of Toxic Substances Control ("Department") that is
16 dated May 30, 2007 ("Order"). Pursuant to Government Code § 11506, Respondent, for itself
17 and no other respondent, responds and objects to the Order as follows:

18 Respondent reserves the right to move to amend, revise, supplement or otherwise
19 change any part of this Notice of Defense as additional information becomes available through
20 discovery or investigation or to correct any information this is inadvertently omitted or
21 mistakenly stated herein. Pursuant to Government Code § 11506, this Notice of Defense is a
22 specific denial of each part and allegation of the Order not expressly admitted herein.
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24 **REQUEST FOR HEARING**

25 Respondent requests a hearing to permit Respondent to present its defense to the
26 allegations contained in the Enforcement Order issued in the above-captioned matter.

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- 1 2.4. Respondent denies the allegations of Paragraph 2.2.2.
- 2 2.5. Respondent denies the allegations of Paragraph 2.2.3.
- 3 2.6. Respondent denies the allegations of Paragraph 2.2.4.
- 4 2.7. Respondent denies the allegations of Paragraph 2.2.5.
- 5 2.8. Respondent denies the allegations of Paragraph 2.2.6.
- 6 2.9. Respondent denies the allegations of Paragraph 2.2.7.
- 7 2.10. Respondent denies the allegations of Paragraph 2.2.8.
- 8 2.11. Respondent denies the allegations of Paragraph 2.2.9.
- 9 2.12. Respondent denies the allegations of Paragraph 2.2.10.
- 10 2.13. Respondent denies the allegations of Paragraph 2.2.11.
- 11 2.14. Respondent is without knowledge or information sufficient to form a belief as to
- 12 the truth of the allegations of Paragraph 2.3, and on this basis, denies generally and specifically
- 13 the allegations contained therein.
- 14 2.15. Respondent denies the allegations of Paragraph 2.3.1.
- 15 2.16. Respondent denies the allegations of Paragraph 2.3.2.
- 16 2.17. Respondent denies the allegations of Paragraph 2.3.3.
- 17 2.18. Respondent denies the allegations of Paragraph 2.3.4.
- 18 2.19. Respondent denies the allegations of Paragraph 2.3.5.
- 19 2.20. Respondent denies the allegations of Paragraph 2.3.6.
- 20 2.21. Respondent denies the allegations of Paragraph 2.3.7.
- 21 2.22. Respondent denies the allegations of Paragraph 2.3.8.
- 22 2.23. Respondent is without knowledge or information sufficient to form a belief as to
- 23 the truth of the allegations of Paragraph 2.4, and on this basis, denies generally and specifically
- 24 the allegations contained therein.
- 25 2.24. Respondent denies the allegations of Paragraph 2.4.1.
- 26 2.25. Respondent denies the allegations of Paragraph 2.4.2.
- 27 2.26. Respondent denies the allegations of Paragraph 2.4.3.
- 28 2.27. Respondent denies the allegations of Paragraph 2.4.4.

3. RESPONSE TO SCHEDULE FOR COMPLIANCE

3.1. Paragraph 3.1 consists of conclusion(s) of law and does not require a response.

3.2. Paragraph 3.1.1 consists of conclusion(s) of law and does not require a response.

3.3. Respondent agrees to comply with the directives set forth in Paragraph 3.1.2.

3.4. Respondent objects to the directives set forth in Paragraph 3.1.3.

3.5. Respondent objects to the directives set forth in Paragraph 3.1.4.

3.6. Respondent objects to the directives set forth in Paragraph 3.1.5.

3.7. Respondent objects to the directives set forth in Paragraph 3.1.6.

3.8. Respondent objects to the directives set forth in Paragraph 3.1.7.

3.9. Respondent agrees to operate in accordance with Respondent's May 21, 1986 HWFP as modified on July 23, 1990 and March 23, 2000, and applicable provisions of Consent Order HWCA P2-04/05-004 and Consent Order to Correct Violations HWCA 2006-1171. Respondent objects to the directives set forth in Paragraph 3.1.8 to the extent they are inconsistent with or in addition to the preceding sentence.

3.10. Respondent agrees to comply with the directives set forth in Paragraph 3.1.9.

3.11. Respondent objects to the directives set forth in Paragraph 3.1.10.

3.12. Respondent agrees to comply with all container management requirements specified in Respondent's HWFP, Section III, part C.1 and the Stipulated Judgment. Respondent objects to the directives set forth in Paragraph 3.1.11 to the extent they are inconsistent with or in addition to the preceding sentence. Respondent further objects to the term "the Consent Order" in Paragraph 3.1.11 on the ground it is vague or ambiguous.

3.13. Respondent agrees to handle and overpack those containers received from off-site found to be leaking or bulging in accordance with procedures specified in Stipulated Judgment, paragraph 5(n). Respondent objects to the directives set forth in Paragraph 3.1.12 to the extent they are inconsistent with or in addition to the preceding sentence.

3.14. Respondent objects to the directives set forth in Paragraph 3.1.13 as vague or ambiguous. For example, not all container handling can occur in authorized storage areas. Respondent reserves the right to supplement or amend its response to the directives set forth in

1 this paragraph upon clarification by the Department.

2 3.15. Respondent agrees to conduct inspections in accordance with 22 Cal. Code Regs. §
3 66264.15. Respondent agrees to manage operating records in accordance with 22 Cal. Code
4 Regs. § 66264.73. Respondent objects to the directives set forth in Paragraph 3.1.14 as vague or
5 ambiguous and to the extent they are inconsistent with or in addition to the preceding two
6 sentences.

7 3.16. Respondent objects to the directives set forth in Paragraph 3.1.15.

8 3.17. Respondent objects to the directives set forth in Paragraph 3.1.16.

9 3.18. Respondent objects to the directives set forth in Paragraph 3.1.17.

10 3.19. Respondent objects to the directives set forth in Paragraph 3.1.18.

11 3.20. Respondent agrees to comply with the directives set forth in Paragraph 3.1.19.

12 3.21. Respondent objects to the directives set forth in Paragraph 3.1.20. Respondent
13 further objects to the term "the Consent Order" in Paragraph 3.1.20 on the ground it is vague or
14 ambiguous.

15 3.22. Respondent objects to the directives set forth in Paragraph 3.1.21.

16 3.23. Respondent agrees to comply with the directives set forth in Paragraph 3.2.

17 3.24. Respondent agrees to comply with the directives set forth in Paragraph 3.3.

18 3.25. Respondent agrees to comply with the applicable directives set forth in Paragraph
19 3.4. This Notice of Defense includes Respondent's objections to provisions of the Order and
20 Respondent's request for a hearing to present its defense to the allegations contained in the Order.

21 3.26. Any activities that Respondent performs in connection with this Order will comply
22 with all local, State, and federal requirements. Respondent objects to the directives set forth in
23 Paragraph 3.5 to the extent they are inconsistent with or in addition to the preceding sentence.

24 3.27. Paragraph 3.6 consists of conclusion(s) of law and does not require a response.

25 3.28. Paragraph 3.7 consists of conclusion(s) of law and does not require a response.

26 3.29. Paragraph 3.8 consists of conclusion(s) of law and does not require a response.

27 3.30. Subject to applicable privileges and protections, Respondent agrees to comply with
28 the directives set forth in Paragraph 3.9.1.

3.31. Respondent agrees to comply with the directives set forth in the first sentence of Paragraph 3.9.1. Subject to applicable privileges and protections, Respondent agrees to comply with the directives set forth in Paragraph 3.9.2. Respondent objects to the directives set forth in the third sentence of Paragraph 3.9.2.

3.32. Respondent agrees to comply with the directives set forth in Paragraph 3.9.3.

3.33. Paragraph 3.10 consists of conclusion(s) of law and does not require a response.

3.34. Paragraph 3.11 consists of conclusion(s) of law and does not require a response.

3.35. Respondent objects to the directives set forth in Paragraph 3.12.

3.36. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.13, and on this basis, denies generally and specifically the allegations contained therein.

4. RESPONSE TO OTHER PROVISIONS

4.1. Paragraph 4.1 consists of conclusion(s) of law and does not require a response.

4.2. Paragraph 4.2 consists of conclusion(s) of law and does not require a response.

4.3. Paragraph 4.3 consists of conclusion(s) of law and does not require a response.

4.4. Paragraph 4.4 consists of conclusion(s) of law and does not require a response.

5. RESPONSE TO RIGHT TO A HEARING

5.1. Paragraph 5.1 consists of conclusion(s) of law and does not require a response. Respondent asserts its right to request a hearing, as set forth herein.

5.2. Respondent admits the allegations of Paragraph 5.2.

6. RESPONSE TO EFFECTIVE DATE

6.1. Paragraph 6.1 consists of conclusion(s) of law and does not require a response. This Notice of Defense includes Respondent's timely written request for a hearing.

7. AFFIRMATIVE DEFENSES AND OBJECTIONS

7.1. Respondent asserts the following separate and affirmative defenses and objections to the allegations in the Enforcement Order, as follows:

First Affirmative Defense

7.2. Service of the Enforcement Order is invalid because the Department failed to

1 prepare and provide to Respondent a proof of service that complies with applicable requirements,
2 including but not limited to 1 Cal. Code Regs. § 1008.

3 Second Affirmative Defense

4 7.3. Respondent objects to the allegations of the Enforcement Order on the ground they
5 do not state acts or omissions upon which the Department may proceed.

6 Third Affirmative Defense

7 7.4. Respondent objects to the form of the Enforcement Order on the ground that it
8 fails to comply with the applicable provisions of the Health & Safety Code. The Department
9 incorrectly asserts that Health & Safety Code § 25187(a) provides authority for the actions
10 ordered in the Compliance Schedule set forth in the Enforcement Order. Elements of the
11 Compliance Schedule that purportedly terminate authorization constitute an action for the
12 suspension or revocation of Respondent's permit or other authorization to operate which must be
13 properly brought under the authority of Health & Safety Code § 25186.1 and in accordance with
14 Government Code §§ 11500, et seq., and regulations adopted by the Department.

15 Fourth Affirmative Defense

16 7.5. Respondent objects to the Schedule for Compliance set forth in the Enforcement
17 Order to the extent it represents an abuse of discretion by the Department.

18 Fifth Affirmative Defense

19 7.6. The Enforcement Order, including the Schedule for Compliance, is barred, in
20 whole or in part, by the applicable statutes of limitation.

21 Sixth Affirmative Defense

22 7.7. The Department is estopped from seeking relief by reason of its actions and course
23 of conduct.

24 Seventh Affirmative Defense

25 7.8. The Department has waived the right, if any, to relief by reason of its actions and
26 course of conduct.

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Eighth Affirmative Defense

7.9. Certain separate and other additional affirmative defenses to the allegations in the Enforcement Order may be available to Respondent. However, these separate and additional affirmative defenses may require discovery before they can be properly alleged. Respondent will move to amend its Notice of Defense, if necessary, to allege such separate and additional affirmative defenses after they have been ascertained by Respondent.

Dated: June 14, 2007

Original signed by Robert P. Hoffman

ROBERT P. HOFFMAN

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